



## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 100**

**[Docket Number USCG-2022-0122]**

**RIN 1625-AA08**

### **Special Local Regulation; Nanticoke River, Sharptown, MD**

**AGENCY:** Coast Guard, Homeland Security (DHS).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a temporary special local regulation for certain waters of the Nanticoke River. This action is necessary to provide for the safety of life on these navigable waters located at Sharptown, MD, during a high-speed power boat racing event on May 13, 2022, May 14, 2022, and May 15, 2022. This proposed rulemaking would prohibit persons and vessels from entering the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Coast Guard Event Patrol Commander. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2022-0122 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-

National Capital Region; telephone 410-576-2674, email D05-DG-SectorMD-NCR-

MarineEvents@uscg.mil.

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
PATCOM	Coast Guard Patrol Commander
§	Section
U.S.C.	United States Code

### **II. Background, Purpose, and Legal Basis**

The Carolina Virginia Racing Association of Newport News, VA, notified the Coast Guard that it will be conducting the Sharptown Regatta from 10 a.m. to 5 p.m. on May 14, 2022 and those same hours on May 15, 2022. The high-speed power boat racing event consists of approximately 100 participating racing boats—including hydroplanes and runabouts of various classes—9 to 12 feet in length. The vessels will be competing in a counter-clockwise direction along a marked approximately 1-mile long course located on the Nanticoke River, adjacent to the Cherry Beach Park and Boat Ramp at Sharptown, MD. In addition, a non-race day of practice and testing will be conducted in the waterway from noon to 5 p.m. on May 13, 2022. Event planners have stated they will not have any spectators areas identified on the water for this 3-day event. Hazards from the power boat racing event include risks of injury or death resulting from near or actual contact among participant vessels and waterway users if normal vessel traffic were to interfere with the event. Additionally, such hazards include participants operating within designated navigation channels, as well as operating near approaches to a local public boat ramps, public recreation and fishing areas, and waterfront businesses and residences. The COTP Maryland-National Capital Region has determined that potential hazards associated with the power boat races would be a safety concern for anyone intending to

participate in this event and for vessels that operate within specified waters of the Nanticoke River.

The purpose of this rulemaking is to protect event participants, non-participants and transiting vessels before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70041.

### **III. Discussion of Proposed Rule**

The COTP Maryland-National Capital Region is proposing to establish special local regulation from 11 a.m. on May 13, 2022, through 6 p.m. on May 15, 2022. The regulations would be enforced from 11 a.m. to 6 p.m. on May 13, 2022, from 9 a.m. to 6 p.m. on May 14, 2022, and from 9 a.m. to 6 p.m. on May 15, 2022. The regulated area would cover all navigable waters of the Nanticoke River within an area bounded by a line connecting the following points: from the shoreline downriver from the Maryland S.R. 313 (Sharptown Road) Highway Bridge, at position latitude 38°32'42" N, longitude 075°43'19" W, thence southeast across the Nanticoke River to the shoreline at latitude 38°32'38" N, longitude 075°43'12" W, thence north and east along the shoreline to latitude 38°33'08" N, longitude 075°42'33" W, thence northwest across the Nanticoke River to the shoreline at latitude 38°33'13" N, longitude 075°42'42" W, thence south and west along the shoreline to and terminating at the point of origin. The regulated area is approximately 1,500 yards in length and 300 yards in width.

This proposed rule provides additional information about areas within the regulated area, their definitions, and the restrictions that would apply to mariners. These areas include "Race Area," "Buffer Area," and "Milling Area."

The proposed duration of the special local regulation and size of the regulated area is intended to ensure the safety of life on these navigable waters before, during, and after the high-speed power boat racing event, scheduled to take place from noon to 5 p.m. on May 13, 2022, from 10 a.m. to 5 p.m. on May 14, 2022, and, from 10 a.m. to 5 p.m.

on May 15, 2022. The COTP and the Coast Guard Event PATCOM would have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area would be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for Sharptown Regatta participants and vessels already at berth, a vessel or person would be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators would be able to request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF-FM channel 16. Vessel traffic would be able to safely transit the regulated area once the Event PATCOM deems it safe to do so. A vessel within the regulated area must operate at safe speed that minimizes wake. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols would be considered a spectator. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer onboard and displaying a Coast Guard ensign. Official Patrols enforcing this regulated area can be contacted on VHF-FM channel 16 and channel 22A.

If permission is granted by the COTP or Event PATCOM, a person or vessel would be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels would be required to operate at a safe speed that minimizes wake while within the regulated area in a manner that would not endanger event participants or any other craft. A spectator vessel must not loiter within the navigable channel while within the regulated area. Only participant vessels and official patrol vessels would be allowed to enter the race area and milling area. The Coast Guard would publish a notice

in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event dates and times.

The regulatory text we are proposing appears at the end of this document.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and duration of the regulated area, which would impact a small designated area of the Nanticoke River for 25 total enforcement hours. This waterway supports tug and barge traffic year round and recreational vessel traffic, which at its peak, occurs during the summer season. Although this regulated area extends across the entire width of the waterway, the rule would allow vessels and persons to seek permission to enter the regulated area, and vessel traffic able to do so safely would be able to transit the regulated area as instructed by the Event PATCOM. Such vessels must operate at safe speed that minimizes wake and not loiter within the navigable channel while within the regulated area. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the regulated area.

##### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not

individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area for 25 total enforcement hours. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

*Submitting comments.* We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2022-0122 in the “SEARCH” box and click “SEARCH.” Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using



<https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*Personal information.* We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

### **PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T05-0122 to read as follows:

#### **§ 100.T05-0122 Sharptown Regatta, Nanticoke River, Sharptown, MD.**

- (a) *Locations.* All coordinates are based on datum NAD 1983.

(1) *Regulated area.* All navigable waters of the Nanticoke River, within an area bounded by a line connecting the following points: from the shoreline downriver from the Maryland S.R. 313 (Sharptown Road) Highway Bridge, at position latitude 38°32'42" N, longitude 075°43'19" W, thence southeast across the Nanticoke River to the shoreline at latitude 38°32'38" N, longitude 075°43'12" W, thence north and east along the shoreline to latitude 38°33'08" N, longitude 075°42'33" W, thence northwest across the Nanticoke River to the shoreline at latitude 38°33'13" N, longitude 075°42'42" W, thence south and west along the shoreline to and terminating at the point of origin. The race area, buffer area, and milling area are within the regulated area.

(2) *Race area.* Located within the waters of the Nanticoke River, between the Maryland S.R. 313 (Sharptown Road) Highway Bridge and Nanticoke River Channel Light 43 (LLNR 24175) in position 38°33'07.79" N, 075°42'44.93" W, at Sharptown, MD. The race area is within the buffer area.

(3) *Buffer area.* The buffer area is a polygon in shape measuring approximately 300 feet in all directions surrounding the entire race area described in the preceding paragraph of this section. The area is bounded by a line commencing at the shoreline at position latitude 38°32'47" N, longitude 075°43'13" W, thence southeast along the northern extent of the Maryland S.R. 313 (Sharptown Road) Highway Bridge to latitude 38°32'41" N, longitude 075°43'06" W, thence northeast to latitude 38°33'01" N, longitude 075°42'39" W, thence northwest to latitude 38°33'08" N, longitude 075°42'44" W, thence southwest to and terminating at the point of origin.

(4) *Milling area.* The milling area is a polygon in shape measuring approximately 200 yards in length by 200 yards in width. The area is southwest and down river from the Maryland S.R. 313 (Sharptown Road) Highway Bridge, bounded by a line commencing at the shoreline at position latitude 38°32'47" N, longitude 075°43'13" W, thence southeast along the northern extent of the Maryland S.R. 313 (Sharptown

Road) Highway Bridge to latitude 38°32'42" N, longitude 075°43'07" W, thence southeast to latitude 38°32'38" N, longitude 075°43'12" W, thence northwest to latitude 38°32'42" N, longitude 075°43'19" W, thence northeast to and terminating at the point of origin.

(b) *Definitions.* As used in this section--

*Buffer area* is a neutral area that surrounds the perimeter of the race area within the regulated area described by this section. The purpose of a buffer area is to minimize potential collision conflicts with marine event participants or high-speed power boats and nearby transiting vessels. This area provides separation between a race area and other vessels that are operating in the vicinity of the regulated area established by the special local regulations in this section.

*Captain of the Port (COTP) Maryland-National Capital Region* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

*Event Patrol Commander or Event PATCOM* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

*Milling area* is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a milling area within the regulated area defined by this section. The area is used before a race start to assemble teams and warm up the participating boats engines while operating off plane.

*Official patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

*Participant* means all persons and vessels registered with the event sponsor as participating in the "Sharptown Regatta" event, or otherwise designated by the event sponsor as having a function tied to the event.

*Race area* is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a race area within the regulated area defined by this section.

*Spectator* means a person or vessel not registered with the event sponsor as a participant or assigned as official patrols.

(c) *Special local regulations.* (1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area described in paragraph (a)(1) of this section. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM, and official patrol vessels enforcing this regulated area, can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must pass directly through the regulated area as instructed by Event PATCOM. A vessel

within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) Only participant vessels and official patrol vessels are allowed to enter and remain within the race area and milling area.

(5) Only participant vessels and official patrol vessels are allowed to enter and transit directly through the buffer area in order to arrive at or depart from the race area.

(6) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Event PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz) or the Event PATCOM on Marine Band Radio, VHF-FM channel 16 (156.8 MHz).

(7) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event dates and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other federal, state, and local agencies.

(e) *Enforcement periods.* This section will be enforced from 11 a.m. to 6 p.m. on May 13, 2022, from 9 a.m. to 6 p.m. on May 14, 2022, and from 9 a.m. to 6 p.m. on May 15, 2022.

Dated: March 8, 2022.

David E. O'Connell,  
Captain, U.S. Coast Guard,  
Captain of the Port Maryland-National Capital Region.  
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